6450-01-P

DEPARTMENT OF ENERGY

Standby Support for Certain Advanced Nuclear Facilities

AGENCY: Department of Energy

ACTION: Notice of inquiry, request for comment, and public workshop**.**

SUMMARY: The Department of Energy is seeking comment and information from the public to assist the Department in deciding how to implement section 638 of the Energy Policy Act of 2005. That section authorizes the Secretary of Energy to enter into standby support contracts with sponsors of advanced nuclear power facilities to provide risk insurance for certain delays attributed to facility licensing or litigation.

DATES: Interested persons must submit written comments by December 23, 2005. Comments may be mailed to the address given in the ADDRESSES section below. Comments also may be submitted electronically by e-mailing them to: StandbySupport@Nuclear.Energy.gov**.** We note that e-mail submissions will avoid delay currently associated with security screening of U.S. Postal Service mail. A public workshop will be held on December 15, 2005 from 8:30 a.m. to 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. Requests to speak at the workshop should be made through the http://www.Nuclear.gov website at least one week before the workshop.

ADDRESSES: Written comments should be addressed to Kenneth Wade, Office of Nuclear Energy, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. The Department requires, in hard copy, a signed original and three copies of all comments.

Copies of the public workshop transcripts, written comments received, and any other docket material may be reviewed on the Web site specifically established for this proceeding. The internet Web site is http://www.Nuclear.gov.

The public workshop will be held at the Marriot Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814 on December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth Wade, Project Manager, Office of Nuclear Energy, NE-30, US Department of Energy, 1000 Independence Avenue, SW, Washington DC 20585. (202) 586-1889 or Marvin Shaw, Attorney-Advisor, US Department of Energy, Office of the General Counsel, GC-52, 1000 Independence Avenue, SW, Washington DC 20585. (202) 585-2906.

SUPPLEMENTARY INFORMATION:

I. OVERVIEW AND PURPOSE OF THE STATUTE

No new nuclear power electric generation facility has been ordered or licensed in the United States in almost 30 years. Some utilities attribute their reluctance to invest in such facilities to potential or anticipated delays resulting from the Nuclear Regulatory Commission ("Commission") licensing process or delays attributable to potential litigation. Recognizing the reluctance of utilities or other potential investors to order and construct new facilities, Congress, the Department of Energy ("Department"), the Commission and other governmental entities have attempted to facilitate and encourage the licensing and full power operation of new nuclear facilities.

In 1989, the Commission promulgated 10 CFR part 52 in order to establish the early site permit, design certification, and combined license processes to enhance the efficiency and effectiveness of the regulatory approval process for siting and licensing

new plants. In the Energy Policy Act of 1992 (Title XXVIII of Pub.L. 102-486), Congress amended the Atomic Energy Act of 1954 (AEA) to further facilitate the standardization and streamlining of nuclear power plant licensing by providing explicit authority to the Commission for the issuance of combined construction and operating licenses (COL). An integral part of the COL process is the use of "Inspections, Tests, Analyses and Acceptance Criteria" (ITAAC) to serve as a basis for ascertaining, during plant construction, whether the licensee is meeting the requirements of the COL so that plant operations can commence predictably upon construction completion. However, since there has not been any application for a COL in the 16 years since the Commission published 10 CFR part 52, the efficiency and effectiveness of these processes have neither been demonstrated in actual practice nor tested in court.

In February 2002, the Department established the Nuclear Power 2010 program, a joint government/industry cost-shared effort to identify sites for new nuclear power plants, to develop and bring to market advanced nuclear plant technologies, evaluate the business case for building new nuclear power plants, and demonstrate untested regulatory processes leading to an industry decision in the next few years to seek Commission approval to build and operate at least one new advanced nuclear power plant in the United States. In 2003, as part of the Nuclear Power 2010 program, the Department funded a report titled, The Business Case for New Nuclear Power Plants (July 2003) (see http:www.nuclear.gov/home/bc/businesscase.html) which defined critical risks and investment issues.

On April 27, 2005, in a speech at the National Small Business Conference, President George W. Bush called for "changes to existing law that will reduce uncertainty

in the nuclear plant licensing process, and also provide federal risk insurance that will protect those building the first four new nuclear plants against delays that are beyond their control." (see www.whitehouse.gov/news/releases/2005/04/print/20050427-3; see also www.whitehouse.gov/news/releases/2005/06/print/20050622.html).

Several months later, Congress passed and President Bush signed into law the Energy Policy Act of 2005 (the Act). Section 638 of the Act addresses the President's proposal to reduce uncertainty in the licensing of advanced nuclear facilities. (42 U.S.C. 16014). The overriding purpose of section 638 is to facilitate the construction and full power operation of new advanced nuclear facilities by providing risk insurance for such projects. Such insurance is intended to reduce financial disincentives and uncertainties for utilities that are beyond their control so that they will invest in the construction of new nuclear facilities. By providing insurance to cover certain of these risks, the Federal government can reduce the financial risk to project sponsors that invest in electric generation facilities that the Administration and Congress believe are necessary to promote a more diverse and secure supply of energy for the Nation.

II. DISCUSSION OF SECTION 638 AND REQUEST FOR PUBLIC COMMENT

A. Overview

Subsection (g) of section 638 provides for regulations necessary to carry out section 638. This NOI discusses some of the major topics related to section 638, including the types of sponsors and facilities covered, the Secretary's contracting authority, appropriations and funding accounts, covered and excluded delays, covered costs and requirements, and disagreements and dispute resolution. For some topics, this NOI indicates implementation approaches and interpretations that the Department is

considering. It also identifies topics on which the Department specifically requests comments. The Department requests comments from the public about these topics and any other issues related to the implementation of section 638. The Department also welcomes comments about the extent to which potential sponsors may be interested in entering into standby support contracts with the Department, and how the authority in section 638 can be implemented most effectively to achieve the objective of reducing uncertainty in the nuclear plant licensing process and thereby facilitate the expeditious construction and operation of new nuclear power plants.

B. Definitions

Subsection (a) of section 638 defines the terms "advanced nuclear facility," "sponsor," and "combined license" as follows. "Advanced nuclear facility" is any nuclear facility for which the Commission approves the reactor design after December 31, 1993, provided that the Commission has not approved such design or a substantially similar design of comparable capacity on or before that date. "Sponsor" is any person who has applied for or been granted a combined license. "Combined License" is a combined construction permit and operating license issued by the Commission for an advanced nuclear facility. While the Department believes these terms are clear, it requests comments as to whether the implementation of section 638 would be facilitated by the Department further clarifying, either in regulations or in the standby support contracts themselves, these terms or any other terms set forth in section 638 (such as "the fair market price of power" in subsection (d)(5)(B)). If a commenter believes that it would be more appropriate for certain clarifications and definitions to be provided in regulations instead of the contracts themselves, or vice versa, the commenter should explain why.

C. Contract Authority

Subsection (b) of section 638 authorizes the Secretary to enter into standby support contracts with sponsors of advanced nuclear facilities that would provide risk insurance against certain regulatory or legal delays that are not the fault of the sponsors but which have the potential to dramatically increase the cost of bringing new nuclear power plants on line. Subsection (b) directs that sufficient funding to pay the covered costs under these contracts be placed in designated Departmental accounts when the contracts are entered into. Subsection (b) provides that only six reactors can receive benefits under these contracts. In addition, subsection (d) provides for different amounts of covered costs with respect to the initial two reactors that receive their COL and commence construction and the subsequent four reactors.

Section 638 grants the Secretary considerable discretion as to when, how and with whom to enter into standby support contracts. The Department believes that the objectives of section 638 are best achieved by maximizing the opportunities for sponsors to enter into standby support contracts as early as practical. The Department recognizes, however, that entering into a contract with a sponsor before the sponsor receives a COL and commences construction may raise a number of implementation issues. These issues arise from, among other things, the requirement to have adequate funding in the accounts before entering into a contract, the different treatment of the initial two facilities and the subsequent four facilities, and the disposition of funds received from a sponsor (see discussion in subsection D of this NOI).

The Department's initial view is that these considerations can be addressed best by the Department being willing to enter into binding agreements with sponsors that

submit COL applications to the Commission, at any time on or after such an application is submitted. These agreements between the Department and project sponsors would not themselves be standby support contracts, but would commit the Department to enter into standby support contracts under section 638 with the sponsors of the first six reactors for which a COL is granted and construction commenced. In commenting on this potential approach, consideration should be given as to what provisions might be included in the agreements to deal with issues such as calculating the amount of funding, if any, from the sponsors and taking into account the extent to which appropriated funds are available. The Department requests comments on whether, at the time the Department and the sponsors enter into the binding agreement or at any another specified time, the sponsors should be required to deposit funds in an escrow account to cover all or some of the anticipated funding requirements of the contract. The Department also welcomes comments on whether other options would be more effective in achieving the objectives of section 638, and, if so, what regulatory or contractual provisions would be useful in implementing these options.

In a related matter, the Department requests comments on whether to utilize an application process. There are many contract process and implementation issues that may be addressed in an application process. For example, should the Department require a fee to accompany the application, and, if so, how much should the fee be and should it be refundable? Should the application process be used to assist in determining the amount of funding needed prior to entering into a contract? Should the applicant/sponsor be required to submit an analysis showing the proposed "cost" of the standby support contract? Should the application process be open to all sponsors or should there be

criteria to exclude certain entities or to select among applicants? What level of detail should the Department institute in any application process? The Department requests comments on the advantages and disadvantages of a detailed application process, including comments on the content and how best to implement such an application process.

The Department also requests comments on whether the regulations or the contracts themselves should provide DOE with the right to cancel a contract should a sponsor not proceed diligently to construct a facility that has received a COL and on which construction has commenced. The Department believes that the objective of section 638 is not to simply encourage the licensing of facilities, but to see that they are successfully constructed and brought online. Yet it is possible that, for a variety of potential reasons, a sponsor might be unable or unwilling to proceed with expeditious construction and completion of a licensed facility. Because the Act only allows DOE to enter into standby support contracts "that cover a total of 6 reactors," should DOE be able to cancel a contract in certain circumstances, thereby potentially "freeing up" one or more of the authorized spots so that DOE could enter into a standby support contract with another sponsor? If so, what are the circumstances that should allow DOE to do so? DOE requests comment on all aspects of this issue.

D. Appropriations and Funding Accounts

Subsection (b)(2) establishes a funding requirement that must be met before the Secretary can enter into any standby support contract. Specifically, the Department must establish two separate accounts and have a specified amount of funds in the account

before entering into a contract. The first account is labeled as a "Standby Support Program Account" ("Program Account"), and the second account is labeled as a "Standby Support Grant Account ("Grant Account"). Subsection (b)(2)(C) specifies that the Program Account contains funds either appropriated to the Secretary in advance of the contract or a combination of appropriated funds and loan guarantee fees. This funding is required to be in an amount sufficient to cover loan costs. Subsection (b)(2) specifies that the term "loan cost" has the meaning given the term "cost of a loan guarantee" under section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)), which is "the net present value, at the time when the guarantee loan is disbursed," of certain costs. The costs for purposes of subsection (b)(2)(C)(i) are identified by a cross-reference to the costs described in subsection (d)(5)(A) which are the principal or interest on any debt obligation of an advanced nuclear facility owned by a non-Federal entity. Subsection (b)(2)(C)(ii) specifies that the "Grant Account" contains funds either appropriated to the Secretary in advance of the contract, funds paid to the Secretary by the sponsor, or a combination of appropriations and payments. This funding is required to be in an amount sufficient to cover the costs described in subsection (d)(5)(B) which are the incremental difference between (i) the fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for the delay, and (ii) the contractual price of power from the advanced nuclear facility subject to the delay.

Funding for both the Program Account and the Grant Account may be provided by either or both the federal government and sponsors of advanced nuclear facilities. In this regard, the Department notes that the provision in subsection (d)(4)(B) allowing

acceptance of non-federal funds makes those non-federal funds available to the Secretary only to pay covered costs. Because the funds are made available to the Secretary "for payment of the covered costs" and not for any other purpose, the Secretary is only able to use the funds for that purpose (see 31 U.S.C. 1301(a)). If funds are not expended on covered costs, the Department anticipates that at the end of the program the government would move to close the account under 31 U.S.C. 1555 and deposit the funds into the general Treasury (see 31 U.S.C. 1555, 31 U.S.C. 3302(b)). The Department requests comment as to what extent, if any, these provisions will affect participation in the program. The Department also requests comment on what is the appropriate mix between government appropriations, sponsor payments, and a combination of both.

Congress specified certain details of the methodology for calculating the funding that must be in the two accounts prior to entering into a contract. However, the Department has considerable discretion in the implementation of that methodology. The Department must decide whether to calculate the funding on a generic basis that would result in the same funding for each facility or on a facility specific basis that would result in different funding for each facility. The Department also must decide whether to differentiate between the initial two facilities and the subsequent four facilities. The Department requests comments on how it should exercise this discretion and, in particular, what factors it should consider in determining both the overall amount of funding and the portion, if any, required from the sponsors.

In a related matter, the Department requests comments on whether, if a sponsor participates in the section 638 risk insurance program, and any loan guarantee program for which the sponsor may be eligible pursuant to Title XVII of the Act, and/or the

production tax credits for advanced nuclear facilities in section 1306 of the Act, there should be any adjustment in the amount paid to the Department by the sponsor to participate in more than one program or in the amounts that a sponsor can receive under more than one program.

E. Covered and Excluded Delays

Covered Delays. Subsection (c) specifies situations in which the Secretary will pay the "covered costs" and situations in which the Secretary is precluded from paying such costs. Among the situations set forth in subsection (c)(1) in which the Secretary will pay such costs are (A) "the failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses, and acceptance criteria established under the combined license or the conduct of preoperational hearings by the Commission…" or (B) "litigation that delays the commencement of full-power operations…" The terms of subsection (c)(1)(A) are closely related to the part 52 COL licensing process. The COL issued to the licensee specifies the inspections, tests, analyses and acceptance criteria (which are known as ITAACs) with which the licensee must comply. The Commission requires verification that the licensee has completed the required inspections, tests, and analyses, and that the acceptance criteria have been met before the reactor can operate. However, the Commission's regulations do not set any schedules for completing ITAAC review. Rather, under the COL, the licensee sets the schedule for ITAACs and may change the schedule as circumstances warrant. Although the Commission may set informal, internal schedules for auditing the licensee's performance of its ITAAC and will provide public notice upon completion of its review,

there is no regulatory requirement for the Commission's conduct or timing of such auditing.

The part 52 regulations provide that the Commission give notice of intended operation not less than 180-days prior to the scheduled date for initial fuel load. During this time, the Commission intends to complete its review of the ITAACs and make a final determination whether the acceptance criteria have been met and reactor operations can begin. Given the complexity of the ITAAC review process, a back-loading of submissions to the Commission toward the end of the 180-day period might cause the Commission to be unable to complete its audit process prior to the fuel loading date. Thus, while a delay in operation might initially appear to be attributable to delays by the Commission, in fact the delay might be more attributable to a sponsor's relatively late completion and submittal of the ITAACs. The Department notes that these issues likely could be satisfactorily addressed through Commission regulations, audit procedures or guidance as they currently exist, or modified as appropriate and necessary. If no changes were made to the Commission's current regulations or procedures, however, the Department requests comments on how to address this situation either through the Department's section 638 regulations or through the standby support contracts.

The Department also believes it is possible that even if there is an ITAAC-related delay attributable to Commission regulatory delays, such a delay in the regulatory schedule might not be the cause of any delay in the full power operation of a nuclear facility that does in fact occur. For example, other factors (such as construction or engineering delays) might contribute to or be the primary cause of the delay. The Department requests comment on how best to establish whether the Commission failed to

comply with the ITAAC schedules and, if so, whether such delay by the Commission is in fact the cause of a delay in full power operation. Specifically, are there any objective, unambiguous triggers that the Department could include in a regulation or in individual contracts to better ascertain whether a delay should be attributable to the Commission and thus covered by the contracts.

In addition, some delays may be caused by other governmental entities, including the Federal Emergency Management Agency (FEMA) and state and local governments. Before full power reactor operations may commence, the Commission must determine that the off-site emergency plans are adequate and in place. Specifically, under 10 CFR part 50, subsection 50.47(a) "Emergency Plans," (which is also applicable to facilities licensed under part 52), the Commission will base its emergency planning findings on review of a related FEMA determination whether "State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented." Similarly, under section 50.47(c), state and local governments may be responsible for some delays, if they decide not to participate in the emergency planning process with FEMA. The Department requests comment as to how best to treat delays that are caused by other governmental agencies and thus may be beyond the control of the Commission.

Subsection (c)(1)(A) also refers to delays in full power operation of advanced nuclear facilities caused by "the conduct of preoperational hearings by the Commission…" This section is susceptible of two different interpretations; it either can be interpreted to allow coverage only for delays associated with preoperational hearings where the Commission has failed to comply with applicable schedules, or it can be interpreted to allow coverage for delays associated with any preoperational hearings,

regardless of who requested or caused the hearing and regardless of whether there was a "failure" of any kind by the Commission.

After issuance of the COL, there is only one opportunity for a public hearing in part 52 (i.e., when a sponsor is ready to load fuel, it must notify the Commission and the Commission must, at least 180 days prior to the load fuel date, issue a public notice and opportunity for hearing on the proposed operation. *See* section 52.103.) The hearing may be held at the discretion of the Commission based on the showing by an outside entity that the acceptance criteria have not been met. There is no preset schedule for the conduct of the pre-operational hearing if it is granted, and the hearing may be formal or informal. If formal, the timing related to and the conclusion of the process is very uncertain. Given the undefined and untested process for a COL, it is not clear which party would be at fault for a delay caused by a pre-operational hearing, or even if "fault" is a relevant concept in holding another hearing to ascertain if the public's overriding need for safety is satisfied.

As a result, the Department is inclined to interpret subsection (c)(1)(A) as meaning that a "covered delay" includes any delay caused by the conduct of preoperational hearings by the Commission. The Department requests comments on this interpretation, how best to implement it, any alternatives, and all other aspects of subsection (c)(1)(A). In particular, given the potential interpretation that some portion of a delay caused by a preoperational hearing might not be considered a "covered" delay, the Department requests comments on whether a regulatory delay should only be considered a "covered delay" after a certain time period, as specified by contract or regulation. If so, what time period would be appropriate?

Subsection (c)(1)(B) refers to "litigation that delays the commencement of full-power operations…" Black's Law Dictionary broadly defines the term "litigation" as "The process of carrying on a lawsuit," and the term "lawsuit" is defined as: "any proceeding by a party or parties in a court of law." In the context of the COL process, there may be litigation both before an administrative board to adjudicate claims in the Commission licensing process and in federal court. The Act is silent as to what type of litigation section 638 refers. Because subsection (c)(1)(A) already refers to certain Commission proceedings that may delay full power operation, the Department is inclined to interpret the term "litigation" in subsection (c)(1)(B) as meaning only litigation in state, federal, or tribal courts, including appeals of Commission licensing decisions, and excluding administrative litigation that occurs at the Commission as part of the COL process. The Department requests comment as to what type of litigation delays should be covered by the Program.

Although the term "full power operation" is not defined in section 638 or 10 CFR part 52, the Commission generally considers this to be operation at five percent or greater. *(See* 10 CFR 2.340(g)(1); and Statement of Policy on Issuance of Uncontested Fuel Loading and Lower Power Testing Operating Licenses, 46 FR 47906, September 30, 1981) The Department intends to follow the Commission practice but nevertheless requests comments on how to incorporate this interpretation of "full power operation" into the regulations carrying out section 638.

Exclusions. Subsection (c)(2) expressly precludes the Secretary from paying costs resulting from three general areas: "(A) the failure of the sponsor to take any action required by law or regulation; (B) events within the control of the sponsor; or (C) normal

business risks." The Department requests comment on how best to interpret and apply this subsection, including examples of each category of exclusion. The Department particularly invites the public to respond to the following questions. What areas of laws and regulations are likely to be involved? What events should be considered within the control of the sponsor and what events should be considered beyond its control? What should be considered a normal business risk, and thus not coverable under the Program? How should these exclusions be implemented with respect to the expressly covered delay caused by the "conduct of preoperational hearings"? In other words, for example, if a sponsor's alleged failure to take an action required by law is the reason that the Commission holds a preoperational hearing, is the delay caused by that hearing a covered delay or an excluded delay? For each of these questions, the Department requests that commenters provide examples.

Due Diligence. Subsection (e) specifies that any standby support contract requires "the sponsor to use due diligence to shorten, and to end, the delay covered by the contract." Black's Law Dictionary defines "diligence as (1) a continual effort to accomplish something and (2) the attention and care required from a person in a given situation. In turn, Black's Law Dictionary defines "due diligence" as "[t]he diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or a discharge of an obligation." The Department requests comments on how this term should be used in the context of a standby support contract, whether it should be further defined in the regulations or contracts, specific examples of situations that commenters believe should or should not come within the term, and how the Department should determine due diligence by the sponsor.

F. Covered Costs and Requirements

Subsection (d) provides for the coverage of costs that result from a delay during construction and in gaining approval for full power operation, specifically (A) principal and interest and (B) incremental cost of purchasing power to meet contractual agreements. The Department requests comments on how these costs should be documented, especially the extent to which they are used in calculating the funding needed prior to entering into a contract.

In addition, while the Department anticipates only covering those costs specifically described in subsection (d)(5)(i) and (ii), it notes that subsection (d)(5) states that the covered costs shall be those that result from certain delays "including" the costs specifically described in subsection (d)(5)(i) and (ii). As a result, it might be possible to interpret subsection (d)(5) as authorizing the Department to provide coverage for costs in addition to those specifically described in subsections (d)(5)(i) and (ii). The Department requests comment on whether those are the only costs that should be covered under the contracts and whether the Grant Account and the Program Account are restricted to covering a particular type of cost (i.e., the cost on which funding is based).

Subsection (d) distinguishes between the "Initial Two Reactors" that receive combined licenses and on which construction is commenced and the "Subsequent Four Reactors." With respect to each of the Initial Two Reactors, the Secretary is required to pay 100 percent of the covered costs of delay, but not more than $500 million per contract. With respect to the Subsequent Four Reactors, the Secretary is required to pay "50 percent of the covered costs of delay that occur after the initial 180-day period of covered delay, but not more than $250 million per contract. The Department requests

comment on the following issues: if there are two reactors being constructed by one sponsor at one location/facility, should there be two contracts in order for the sponsor to receive up to $500 million in coverage per reactor? Should a sponsor be precluded from entering into a contract that includes more than one reactor? In addition, the Department requests comment about the term "commencement of construction" given that neither part 52 nor section 638 defines this term. The commencement of construction of a facility may be defined in several ways, including activities such as the planning and design of a reactor facility, a firm purchase order for a reactor facility, or preparation of a site in anticipation of facility construction. On the other hand, under part 52, the Commission will issue a COL only upon finding that applicable regulatory requirements have been met, and that "there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations." 10 CFR part 52.97. The Department believes it is reasonable to interpret "commencement of construction" in a manner consistent with Commission practice and requests comments on what would be the elements of such an interpretation.

G. Disagreements and Dispute Resolution

Just as with any commercial insurance contract, there may be potential areas in which a sponsor may disagree with the Department as to an interpretation of a section 638 risk insurance contract provision. The Act does not require any particular dispute resolution mechanism or procedure, and therefore the Department requests comment on

how disputes between sponsors and the Department should be resolved, and what dispute resolution provisions should be included in the applicable regulations or contracts.

The Department notes that an important consideration is to make the standby support regulations that implement section 638 workable, so that they can be readily administered in an efficient and effective manner. Specifically, the regulations may need to include a mechanism to resolve factual and legal disputes as to whether a delay is covered or excluded as well as which party is at fault for a particular delay or event. Other Federal agencies that provide financial assistance have established oversight offices to monitor the projects they fund. For instance, the Department of Transportation's Transportation Infrastructure Finance and Innovation Act (TIFIA) program, which provides grants for surface transportation projects, has established a TIFIA Joint Program Office to coordinate and manage the implementation of the TIFIA credit program. (See "TIFIA Project Oversight and Credit Monitoring Guidance" (http://tifia.fhwa.dot.gov/oversight.htm)) Similarly, the Oversees Private Investment Corporation (OPIC), which provides political risk insurance to U.S. businesses that invest oversees, has established its Office of Accountability to monitor OPIC supported projects. (see http://www.opic.gov) Although these programs cover or potentially cover far more entities and projects than the finite number of projects that may be covered by the Standby Support Program, they may provide guidance as to how the Department should resolve disputes.

H. Monitoring and Reporting Requirements

Subsection (f) requires the Commission to report to the Secretary and Congress on a quarterly basis regarding the licensing status of advanced nuclear facilities covered by a

standby support contract. Apart from the Commission's statutory reports, the Department requests comments on the need to require any other reporting by the sponsor or others to the Department to assist the Department in its monitoring responsibilities, including the content, timing and impact of such reporting. Similarly, the Department requests comment on any other reporting or monitoring activities it should engage in to fulfill its responsibilities under the contract.

III. Public Participation

A. Attendance at Public Workshop

The time and date of the public workshop are listed in the **DATES** section at the beginning of this notice of inquiry. Anyone who wants to attend the public workshop should register on the Website (http://www.nuclear.gov) of the Department's Office of Nuclear Energy, Science and Technology.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in today's notice or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to the address shown in the ADDRESSES section at the beginning of this notice, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Persons requesting to speak should briefly describe the nature of their interest in this public workshop and provide a telephone number for contact. The Department requests persons selected to be heard to submit an advance copy of their statements at least one week before the public workshop. At its discretion, the Department may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Office of Nuclear Energy. A person requesting to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Workshop

The Department will designate a Departmental official to preside at the public workshop and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary–type public hearing. A court reporter will be present to record the proceedings and prepare a transcript. The Department reserves the right to schedule the order of presentations and to establish procedures governing the conduct of the public workshop. After the public workshop, interested parties may submit further

comments on the proceedings as well as any aspect of section 638 until the end of the comment period set forth in this notice.

The public workshop will be conducted in an informal, conference style. The Department will allow time for presentations by participants and encourage all interested parties to share their views on issues affecting this proceeding. Each participant will be allowed to make a prepared general statement (within the time limits determined by the Department), before the discussion of specific topics. The Department will permit other participants to comment briefly on any general statements. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

The Department will make the entire record of this proceeding, including the transcript from the public workshop available for inspection at the U.S. Department of Energy, Forrestal Building, Room 1J-018, 1000 Independence Avenue, SW, Washington DC 20585 (202) 586-9127 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may buy a copy of the transcript of the public workshop proceedings from the transcribing reporter.

D. Submission of Comments

The Department requests written comments from interested persons on all aspects of implementing the standby support program authorized by section 638 of the Act. All information provided by commenters will be available for public inspection at the Department of Energy, Freedom of Information Reading Room, Room 1E-190, 1000

Independence Avenue, SW Washington, DC 20585 between the hours of 9 a.m. and 4 p.m. Monday through Friday, except for Federal holidays.

The Department also intends to enter all written comments on a website specifically established for this proceeding. The internet website is http:www.nuclear.gov. To assist the Department in making public comments available on a website, interested persons are encouraged to submit an electronic version of their written comments in accordance with the instructions in the **DATES** section of this notice.

Because the Department intends to make all submissions publicly available on a website, the Department requests that commenters not submit information believed to be confidential and exempt from public disclosure. However, if any person chooses to submit information that he or she considers to be privileged or confidential and potentially exempt from public disclosure, that person must clearly identify the information that is considered to be privileged or confidential and explain why the submitter thinks the information is exempt from disclosure, addressing as appropriate the criteria for nondisclosure in the Department's Freedom of Information Act regulations at 10 CFR 1004.11(f). The Department also requests such submitters provide one copy of their comments from which the information believed to be exempt from disclosure has been redacted, with the areas where information or data sought to be protected from disclosure is exempt from such disclosure in accordance with the procedures set forth in its Freedom of Information Act regulations at 10 CFR 1004.11.

Factors of interest to the Department when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why

such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on November 17, 2005.

R. Shane Johnson,

Acting Director, Office of Nuclear Energy,

Science and Technology.